

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TWANIKA JOHNSON, No C-03-0506 VRW  
Plaintiff ORDER

v

JOANNE B BARNHART,  
Commissioner of Social Security,

Defendant.

/

Plaintiff appeals from the decision of the Social Security Administration ("SSA") denying plaintiff social security disability benefits. The parties have filed cross motions for summary judgment. Pl Mot (Doc #13); Def Mot (Doc #15). Based on a careful review of the administrative record and of the applicable law, the court DENIES plaintiff's motion and GRANTS defendant's motion.

\\  
\\

1

I

2

A

3 Plaintiff alleges disability since birth due to limited  
4 vision in the right eye. Administrative Record ("AR") at 13. On  
5 May 17, 1999, ophthalmologist Dr Leo Capocchi first examined  
6 plaintiff's vision. AR at 149. Dr Capocchi reported that  
7 plaintiff had experienced ocular misalignment since shortly after  
8 her birth on January 24, 1996. Id. Plaintiff had a large right  
9 extropia, but her eyes otherwise appeared "grossly normal." Id.  
10 Atropine refraction revealed -6.00 right myopia and +.50 left  
11 hyperopia; plaintiff had "at least finger counting vision [in the]  
12 right eye and apparently normal vision [in the] left eye." Id. Dr  
13 Capocchi recommended referral to a pediatric ophthalmologist. Id.

14 Upon referral in summer 1999, Dr Creig Hoyt, director of  
15 pediatric ophthalmology at UCSF Stanford Health Care, recommended  
16 that plaintiff wear a patch over her left eye for eight hours a day  
17 to improve vision in her right eye. AR at 159, 174. On January  
18 20, 2000, Dr Hoyt wrote to Dr Capocchi that eye patching had  
19 improved the visual acuity in the right eye to only 20/80ths. AR  
20 at 159. Dr Hoyt expressed concern that the right eye might have  
21 eccentric fixation. Plaintiff still suffered from anisometropic  
22 refractive error, with the right eye significantly myopic. Id. Dr  
23 Hoyt reported that he could not be certain whether there was "a  
24 significant disc anomaly that accounts for some of the visual  
25 problems." Dr Hoyt concluded: "I think we at least need to renew  
26 our efforts in trying to treat this patient over the next few  
27 months. If visual acuity cannot be improved further, reassessment  
28 of the underlying structural processes may be indicated." Id.

## United States District Court

For the Northern District of California

1                   On April 18, 2000, Dr Hoyt reported that the patching had  
2 proved unsuccessful. AR at 174. Although plaintiff had been  
3 patched for eight hours per day for almost a year, there was little  
4 evidence that the vision in the amblyopic eye was improving. Id.  
5 Dr Hoyt noted that he would perform an evaluation under anesthesia  
6 to ensure that there was "no structural pathology that precludes  
7 the ability to rehabilitate the anisometropic eye." Id.

8                   After this evaluation under anesthesia, AR at 176,  
9 plaintiff saw Dr Hoyt in November 2000. Dr Hoyt found that  
10 plaintiff still had "dense amblyopia in the right eye with almost  
11 eccentric fixation." AR at 171. In addition, Dr Hoyt concluded  
12 that patching therapy had been "only marginally effective." Dr  
13 Hoyt nevertheless continued the patching program over her left eye  
14 through December 2001. AR at 166, 167. On December 7, 2001, Dr  
15 Hoyt reported that "[v]isual acuity remains at 20/400 in the right  
16 eye with eccentric viewing." Dr Hoyt planned to maintain patching  
17 of the left eye, though only on a thirty-minute-per-day basis and  
18 to continue to see plaintiff periodically. Id.

## B

21                   In addition to plaintiff's eye problems, plaintiff claims  
22 that she also experienced behavioral and emotional problems. While  
23 living with her grandmother until the age of two, plaintiff endured  
24 beatings from her grandmother's boyfriend. AR at 40-41. In May  
25 1998, plaintiff's great grandmother, Ruth Hamilton, took over  
26 custody of plaintiff to prevent her from being sent to a foster  
27 home. Id.

28 \\

1           In the fall of 1998, Plaintiff enrolled in Valencia  
2 Gardens pre-school. AR at 41. It took plaintiff three to four  
3 months to get into pre-school because she required special care due  
4 to her severe eye problem. Id. Evaluating plaintiff between  
5 November 1998 and February 1999, Valencia Pediatrics reported that  
6 plaintiff had a history of exotropia, mild dry skin, temper  
7 tantrums and difficulty sleeping at night. AR at 130-35.

8           Valencia Gardens teacher Eva White also assessed  
9 plaintiff's social behavior between June and September 1999. AR at  
10 126-29. In June 1999, plaintiff had difficulty completing  
11 activities, and her attention span was short. AR at 126. She  
12 walked always looking down and had trouble climbing stairs and  
13 peddling a tricycle. She was very distant at times, choosing not  
14 to communicate with adults. Id. In addition, she did not share or  
15 get along well with other children. Id.

16           By August 1999, plaintiff's behavior had significantly  
17 improved. White reported in August that "[plaintiff] comes on her  
18 own now to listen to stories being read" and that "[plaintiff's]  
19 confidence in climbing and getting down from high places has  
20 improved tremendously." AR at 126-27. Plaintiff was more excited  
21 about participating in activities, was "gradually asking for help  
22 and talking to adults," and was "learning to share and get along  
23 well with other children." AR at 126-29. In her concluding  
24 comments, White stated that while plaintiff experienced  
25 difficulties at the start of the program, by August 1999 she was  
26 "doing very well in the center. This was definitely a need for  
27 her. She is a happy child [who] loves to come to school, [and]  
28 loves her playmates and teachers." AR at 129.

1           At the April 11, 2000, hearing, Ms Hamilton testified that  
2 she had observed plaintiff experiencing emotional and behavioral  
3 difficulties at Valencia Gardens. AR at 43-60. Ms Hamilton  
4 testified that plaintiff: pushed and shoved her playmates; cried  
5 about having to wear an eye patch for eight hours per day because  
6 of her difficulty seeing; had difficulty climbing monkey bars and  
7 riding her tricycle; and had sleep problems, refusing to take a nap  
8 at school. AR at 46, 48, 51, 53-54.

9           Ms Hamilton testified that plaintiff experienced similar  
10 problems at home. AR at 54-60. Ms Hamilton stated that plaintiff  
11 had difficulty falling asleep and needed to be accompanied to the  
12 bathroom at 3:00am. AR at 54. Ms Hamilton testified further that  
13 plaintiff: had difficulty distinguishing colors and needed help  
14 with getting dressed, washed or bathed; cried sometimes, wanting to  
15 see her mother; threw daily temper tantrums "when she c[ouldn't]  
16 get her way"; and was a "very picky eater" with poor eating habits.  
17 AR at 56, 114, 57, 57-58.

18

19

C

20           On March 30, 1999, plaintiff filed an application with  
21 the SSA for Supplemental Security Income ("SSI") payments alleging  
22 disability since birth due to limited vision in the right eye. AR  
23 at 13. Non-examining State Agency physicians Dr Darnell Richey and  
24 Dr Phillip Suster conducted SSA Childhood Disability Evaluations of  
25 plaintiff. AR at 136-46. In June 1999, both doctors concluded  
26 that although the impairment was "severe," it did not "meet,  
27 medically equal, or functionally equal the severity of a listing."

28 \\

1 AR at 136. Accordingly, on June 30, 1999, the SSA denied  
2 plaintiff's application for SSI. AR at 65, 68-70.

3 After plaintiff requested reconsideration in August 1999,  
4 AR at 71, non-examining State Agency physician Dr SD Battis  
5 confirmed Dr Richey's and Dr Suster's findings that plaintiff's  
6 impairment was insufficient to warrant receiving SSI. AR at 150-  
7 58. Plaintiff's request for reconsideration was denied in  
8 September 1999. AR at 72-75. In November 1999, plaintiff filed a  
9 request for a hearing before an Administrative Law Judge ("ALJ").  
10 AR at 76.

11 The ALJ held a hearing on April 11, 2000, at which Ms  
12 Hamilton and medical expert Dr Moses Grossman testified. AR at 33-  
13 64. Dr Grossman belonged to the American Board of Pediatrics and  
14 practiced at San Francisco General Hospital. AR at 89.

15 To determine whether plaintiff was disabled, and thus  
16 entitled to SSI benefits, the ALJ considered two specific issues as  
17 required by section 1614(a)(3)(C) of the Social Security Act ("the  
18 Act"): (1) whether plaintiff was engaging in "substantial gainful  
19 activity" and (2) "whether she has a medically determinable  
20 physical or mental impairment which results in marked and severe  
21 functional limitations, and which can be expected to result in  
22 death or which has lasted or can be expected to last for a  
23 continuous period of not less than 12 months." AR at 13.

24 The ALJ found that: (1) plaintiff's lack of vision in  
25 the right eye was a severe impairment, 20 CFR § 416.924(c), and (2)  
26 the statements made by the plaintiff's guardian, Ms Hamilton, were  
27 credible. AR at 16. The ALJ held, however, that (3) the  
28 limitations, resulting from the effects of the plaintiff's

1 impairment, do not meet, medically equal or functionally equal the  
2 criteria of any of the listed impairments in Appendix 1, Subpart P,  
3 Part 404. Id; 20 CFR § 416.924(d). Finally, the ALJ concluded  
4 that (4) plaintiff does not have a medically determinable physical  
5 or mental impairment that results in marked or severe functional  
6 limitations and (5) plaintiff has not been under a "disability" as  
7 defined in the Act, at any time through the date of this decision.  
8 AR at 16. On April 24, 2000, the ALJ denied benefits to plaintiff.  
9 Id.

10 In reaching this decision, the ALJ considered Ms  
11 Hamilton's and Dr Grossman's testimony in determining that  
12 plaintiff's impairment(s) did not meet or medically equal the  
13 listings. AR at 14. The ALJ wrote: "The medical expert, Dr Moses  
14 Grossman[,] stated that the claimant has no vision in her right eye.  
15 Because she has a good eye, however, she does not meet the Listings.  
16 The undersigned finds the claimant['s] impairment (or impairments)  
17 does not meet or medically equal the criteria of any of the listed  
18 impairments \* \* \*." Id. Next, the ALJ stated the appropriate law  
19 for determining functional limitation and cited the medical reports  
20 of Drs Capocchi and Hoyt and the Childhood Disability Evaluation  
21 Form in determining that plaintiff's impairment(s) did not  
22 functionally equal the listings. AR at 15-16.

23 Plaintiff appealed the ALJ's decision to the SSA's  
24 Appeals Council ("Appeals Council") on June 22, 2000. AR at 8-9.  
25 The Appeals Council considered: (1) "the applicable statutes,  
26 regulations, and rulings in effect as of the date of this action";  
27 (2) the final regulations, effective January 2, 2001, implementing  
28 the childhood disability provisions of Public Law 104-193; (3) the

1 contentions raised in plaintiff's August 21, 2002, brief; and (4)  
2 the additional evidence identified on the attached Order of the  
3 Appeals Council. AR at 4. The Appeals Council found that none of  
4 these provided a basis for changing the ALJ's decision. Id. On  
5 December 6, 2002, the Appeals Council declined to review the ALJ's  
6 decision, and the ALJ's decision became final. AR at 4-5.

7 On February 5, 2003, plaintiff timely filed the instant  
8 action for judicial review of the final decision. Compl (Doc #1).

10 II

11 The court's jurisdiction is limited to determining  
12 whether the SSA's denial of benefits is supported by substantial  
13 evidence in the administrative record. 42 USC § 405(g). A  
14 district court may overturn a decision to deny benefits only if the  
15 decision is not supported by substantial evidence or if the  
16 decision is based on legal error. See Andrews v Shalala, 53 F3d  
17 1035, 1039 (9th Cir 1995); Magallanes v Bowen, 881 F2d 747, 750  
18 (9th Cir 1989). The Ninth Circuit defines "substantial evidence"  
19 as "more than a mere scintilla but less than a preponderance; it is  
20 such relevant evidence as a reasonable mind might accept as  
21 adequate to support a conclusion." Andrews, 53 F3d at 1039.  
22 Determinations of credibility, resolution of conflicts in medical  
23 testimony and all other ambiguities are to be resolved by the ALJ.  
24 See *id*; Magallanes, 881 F2d at 750. The decision of the ALJ will  
25 be upheld if the evidence is "susceptible to more than one rational  
26 interpretation." Andrews, 53 F3d at 1040.

27 \\

28 \\

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## III

## A

Section 1614(a)(3)(C)(I) of the Act defines a child as "disabled" if she "has a medically determinable physical or mental impairment, which results in marked or severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 USC § 1382c(a)(3)(C)(I). The SSA "consider[s] all relevant evidence in your case record when we make a determination or decision whether you are disabled \* \* \*. Thus, we will consider the combined effects of all your impairments upon your overall health and functioning." 20 CFR § 416.924(a).

When a child plaintiff files an application for benefits, the SSA conducts a three-step evaluation process to determine whether the child is disabled. *Id.* For a child to be determined disabled, (1) she must not be involved in "substantial gainful activity," (2) she "must have a medically determinable impairment that is severe," and (3) her "impairment(s) must meet, medically equal or functionally equal the listings." 20 CFR § 416.924(b)-(d).

An impairment is medically equivalent to a listed impairment in Appendix 1, Subpart P, Part 404 "if the medical findings are at least equal in severity and duration to the listed findings." 20 CFR 416.926(a). If they are not, the SSA "will nevertheless find that your impairment is medically equivalent to that listing if you have other medical findings related to your impairment that are at least of equal medical significance." 20 CFR 416.926(a)(1)(ii).

\\"

1           20 CFR § 416.926a sets forth the regulations determining  
2 functional equivalence for children. Because these regulations  
3 changed effective January 2, 2001, the ALJ – who made his decision  
4 in April 2000 – and the Appeals Council – which made its decision in  
5 December 2002 – were required to consider different regulations when  
6 coming to their decisions.

7           Prior to January 2, 2001, the regulations prescribed four  
8 methods that the SSA may use to decide whether an impairment is  
9 functionally equivalent in severity to a listing: (1) limitation of  
10 specific function; (2) broad areas of development or function; (3)  
11 episodic impairments; and (4) limitations related to the effects of  
12 treatment or medication. 20 CFR § 416.926a(b).

13           Under the second method, the SSA evaluated children  
14 between the ages of three and eighteen in terms of five areas of  
15 development: cognitive and communicative development; motor  
16 development; social development; personal development; and  
17 concentration, persistence and pace. 20 CFR 416.926a(c)(5)(iii).  
18 Disability was established if the child had an extreme degree of  
19 restriction in one area of functioning or marked limitation in two  
20 areas of function. 20 CFR § 416.926a(b)(2). An extreme restriction  
21 was present if there was "no meaningful function in a given area,"  
22 and a marked limitation arose when the "degree of limitation is such  
23 as to interfere seriously with the child's functioning." 20 CFR §  
24 416.926a(c)(3).

25           As of January 2, 2001, the regulations instruct the SSA to  
26 determine functional equivalence by considering how the child  
27 functions in six types of activities: (1) acquiring and using  
28 information, (2) attending and completing tasks, (3) interacting and

1 relating to others, (4) moving about and manipulating objects, (5)  
2 caring for [her]self and (6) health and physical well-being. 20 CFR  
3 § 416.926a(b)(1). Similar to the superceded regulation, the SSA  
4 decides that a child's impairment functionally equals the listings  
5 if it is of "listing-level severity[:] if [the child has] 'marked'  
6 limitations in two of the domains in paragraph (b)(1) of this  
7 section, or an 'extreme' limitation in one domain." 20 CFR §  
8 416.926a(d). The definitions of "marked" and "extreme" remain the  
9 same. 20 CFR § 416.926a(e)(2)-(3).

10

11

B

12 Plaintiff offers three arguments why the ALJ's decision  
13 should be reversed and the case remanded for rehearing. First,  
14 plaintiff contends that the Appeals Council "failed to apply the  
15 final rules" effective January 2, 2001, in denying plaintiff's  
16 request for review. Pl Mot at 10. Second, plaintiff asserts that  
17 the ALJ failed to "discuss or articulate any rationale for finding  
18 that [p]laintiff's impairments did not medically equal or  
19 functionally equal a listed impairment." Id at 11-12. Finally,  
20 plaintiff argues that the ALJ did not make a reasonable effort to  
21 obtain a "case evaluation" from a pediatrician or appropriate  
22 specialist. Id at 15. The court examines each argument in turn.

23

24

1

25 SSA regulations provide that the Council will grant a  
26 request for review where: (1) there appears to be an abuse of  
27 discretion by the ALJ; (2) there is an error of law; (3) the ALJ's  
28 action, findings or conclusions are not supported by substantial

## United States District Court

For the Northern District of California

1 evidence; or (4) there is a broad policy or procedural issue that  
2 may affect the general public interest. The regulations also  
3 provide that where new and material evidence is submitted with the  
4 request for review, the entire record will be evaluated and review  
5 will be granted if the Council finds that the ALJ's actions,  
6 findings or conclusions are contrary to the weight of the evidence  
7 currently of record. 20 CFR 416.1470(a)-(b).

8 As to the change in rules effective January 2, 2001, the  
9 SSA stated: "When the final rules become effective, we will apply  
10 them to new applications filed on or after the effective date of the  
11 rules. We will also apply them to the entire period at issue for  
12 claims that are pending at any stage of our administrative review  
13 process \* \* \*." 65 FR 54747 (9/11/01).

14 The Council followed the above rules in coming to its  
15 decision. In denying request for review, the Council wrote that it  
16 had "considered the contentions raised in [plaintiff]'s brief dated  
17 August 21, 2002, as well as the additional evidence also identified  
18 on the attached Order of the Appeals Council." AR at 4. The  
19 Council also "considered the final regulations, effective January 2,  
20 2001, implementing the childhood disability provisions of Public Law  
21 104-193." Id. The Council held that neither the additional  
22 evidence nor the new regulations "provide[d] a basis to change the  
23 Administrative Law Judge's decision." Id.

24 Plaintiff argues that the ALJ "did not even evaluate  
25 Plaintiff's case using the six domains of functioning." Pl Mot at  
26 11. Plaintiff also contends that the Council's "conclusory  
27 assertion that it had considered the final rules fails to rise to  
28 the level of articulation required by circuit precedent." Id.

1 Plaintiff, however, fails to provide support – in the form of a  
 2 regulation or judicial authority – for either of these contentions.

3 In contrast, defendant cites a Seventh Circuit case  
 4 holding that the Council properly denied a child plaintiff's request  
 5 for review based on final rules for evaluating child disability.  
 6 Def Mot at 6 (citing Keys v Barnhart, 347 F3d 990, 994 (7th Cir  
 7 2003)). In denying request for review, the Council in Keys stated  
 8 that it "ha[d] considered the final regulations \* \* \* implementing  
 9 the childhood disability provisions \* \* \* [and found that the] new  
 10 regulations do not provide a basis to change the [ALJ]'s decision."  
 11 *Id* at 992. In affirming the Commissioner's final decision, the  
 12 Seventh Circuit held:

13 Had the Council just said we're denying review  
 14 because we're too busy, then the only decision  
 15 for the courts to review would be that of the  
 16 [ALJ]. But that was not the character of the  
 17 Council's reason for denying review; its reason  
 18 was that the new regulations would make no  
 difference to the outcome. That was a  
reasonable substantive judgment to which we  
would defer even if we did not independently  
believe that the changes brought about by the  
new regulations do not help Keys.

19 *Id* at 995 (emphasis added).

20 The Keys court stated further that "the differences  
 21 between the old and new regulations are not great" and "the report  
 22 accompanying the final regulations confirms that the purpose of the  
 23 revision was 'largely to clarify' the earlier categories and to  
 24 'rename, and to some extent to reorganize, the prior areas of  
 25 functioning.'" Keys, 347 F3d at 994 (quoting 65 Fed Reg 54756  
 26 (9/11/00)).

27 In its decision denying review, the Appeals Council  
 28 specifically stated that it had considered the new regulations and

1 found that they did not provide a basis to change the ALJ's  
2 decision. AR at 4. The Council also noted that it had considered  
3 the additional evidence submitted with the appeal (see AR at 6). AR  
4 at 4. It found no abuse of discretion by the ALJ, no error of law,  
5 no evidence and no policy concern that warranted overturning the  
6 ALJ's decision. *Id.* Applying the rationale of Keys, the court  
7 concludes that the Council's decision was a "reasonable substantive  
8 judgment" and therefore rejects plaintiff's first argument.

9

10 2

11 Plaintiff contends that the ALJ's decision should be  
12 reversed and the case remanded for rehearing because the ALJ failed  
13 to "discuss or articulate any rationale for finding that Plaintiff's  
14 impairments did not medically equal or functionally equal a listed  
15 impairment." Pl Mot at 11-12. Plaintiff cites Ninth Circuit  
16 precedent as support: "[I]n determining whether a claimant equals a  
17 listing under step three of the Secretary's disability evaluation  
18 process [medical and functional equivalence tests], the ALJ must  
19 explain adequately his evaluation of alternative tests and the  
20 combined effects of the impairments." Marcia v Sullivan, 900 F2d  
21 172, 176 (9th Cir 1990).

22 In the instant case, the court holds that the ALJ did  
23 adequately explain his evaluation of plaintiff's record and based  
24 his findings on substantial evidence.

25

26

a

27 The ALJ found first that plaintiff's impairment(s) did not  
28 meet the criteria of any of the SSA's listed impairments. AR at 14.

1 The ALJ considered both Ms Hamilton's and Dr Grossman's testimony in  
2 reaching this decision. Id. After recounting in detail Ms  
3 Hamilton's testimony about plaintiff's emotional and behavioral  
4 problems, the ALJ quoted Dr Grossman: "[Plaintiff] has no vision in  
5 her right eye. Because [plaintiff] has one good eye, however, she  
6 does not meet the Listings." Id. Specifically, plaintiff did not  
7 meet listing 20 CFR Pt 404, Subpt P App 1, § 2.02 (impairment of  
8 visual acuity requires that vision in the better eye after best  
9 correction be 20/200 or less).

10

11

b

12 The ALJ's consideration of Ms Hamilton's and Dr Grossman's  
13 testimony was also sufficient for the ALJ to determine that  
14 plaintiff's impairment(s) did not medically equal a listed  
15 impairment. An impairment is medically equivalent to a listed  
16 impairment "if the medical findings are at least equal in severity  
17 and duration to the listed findings" or "if you have other medical  
18 findings related to your impairment that are at least of equal  
19 medical significance." 20 CFR 416.926(a).

20

21 To equal a listed impairment, plaintiff "must establish  
22 symptoms, signs and laboratory findings 'at least equal in severity  
23 and duration' to the characteristics of the relevant listed  
24 impairment \* \* \*." Tacket v Apfel, 180 F3d 1094, 1099 (9th Cir  
25 1999) (quoting 20 CFR § 404.1526). Furthermore, under Ninth Circuit  
26 precedent, "the opinions of non-treating or non-examining physicians  
27 may also serve as substantial evidence when the opinions are  
28 consistent with independent clinical findings or other evidence in  
the record." Thomas v Barnhart, 278 F3d 947, 957 (9th Cir 2002).

1                   Both Ms Hamilton's and Dr Grossman's testimony demonstrate  
2 that plaintiff's emotional and behavioral problems were not medical  
3 equivalents. The ALJ thoroughly recounted Ms Hamilton's testimony,  
4 discussing plaintiff's physical problems, such as vision, movement  
5 and sleep, and social troubles, such as temper, shyness and  
6 loneliness. AR at 14. The ALJ and Dr Grossman reasonably concluded  
7 that these were not medical problems of the same "severity" or  
8 "duration" as the listed impairments. AR at 4, 60-61. Dr Grossman  
9 stated that plaintiff was "going through some difficulties, now,  
10 obviously, because what Dr Hoyt is trying to do is improve the  
11 vision in the right eye by patching the left eye, and that's causing  
12 her problems, obviously." AR at 60. Dr Grossman reasonably  
13 concluded that "[t]he other things we talked about [non-eye related  
14 problems], I think, are pretty normal behavior for a child, under  
15 her circumstances. And unfortunately, I do not think it either  
16 meets or equals the listings \* \* \*." AR at 60-61 (emphasis added).

17                   Dr Grossman's conclusions were uncontradicted by  
18 plaintiff's prior medical reports. AR at 136-46, 147-59.  
19 Accordingly, as a pediatrician who had reviewed the record, Dr  
20 Grossman's opinions represented substantial evidence. See Thomas,  
21 278 F3d at 957. Moreover, plaintiff introduced no "symptoms, signs  
22 and laboratory findings" that established severity or duration equal  
23 to the listed impairment. See Tacket, 180 F3d at 1099. For the  
24 foregoing reasons, the ALJ's finding that plaintiff's impairment did  
25 not medically equal the listed impairments was supported by  
26 substantial evidence.

27 \\

28 \\

1 c

2 The ALJ's determination that plaintiff's impairment(s) did  
3 not functionally equal a listed impairment found support not only in  
4 Ms Hamilton's and Dr Grossman's testimony, but also in the medical  
5 reports of Drs Capocchi and Hoyt and in the SSA's Childhood  
6 Disability Evaluation Form. AR at 15; AR at 147-59. Both Dr  
7 Capocchi and Dr Hoyt reported that plaintiff only suffered problems  
8 in her right eye. AR at 147-49, 159. Dr Capocchi stated further  
9 that plaintiff "appear[ed] to be otherwise normal during the office  
10 examination of eyes." AR at 148.

11 The Childhood Disability Evaluation Form directly dealt  
12 with the issue of functional equivalence. The State Agency  
13 physicians concluded that plaintiff's degree of limitation in four  
14 of five "areas of development or functioning" was "less than marked"  
15 (cognitive and communicative, motor, social and personal). AR at  
16 138, 152. They found "no evidence of limitation" in the final  
17 category (concentration, persistence, or pace). Id. Accordingly,  
18 plaintiff's impairment(s) fell short of the requirement for  
19 functional equivalence: "extreme limitation" in at least one  
20 category or "marked limitation" in at least two. 20 CFR §  
21 416.926a(b) (2).

22 By contrast, plaintiff has offered no theory based on  
23 evidence in the record that supports a finding of functional  
24 equivalence. In Lewis v Apfel, the Ninth Circuit held that  
25 plaintiff is responsible for pointing to evidence that shows that  
26 his combined impairments equal a listed impairment. 236 F3d 503,  
27 514 (9th Cir 2001). In the instant case, plaintiff has similarly  
28 introduced no evidence that the lack of vision in her right eye

1 combined with her behavioral problems functionally equals a listing.

2 Considering all the evidence, the ALJ reasonably concluded  
 3 that both plaintiff's physical and emotional problems were  
 4 insufficient to warrant SSI payments: "The limitations, resulting  
 5 from the effects of the claimant's impairment, do not meet,  
 6 medically equal, or functionally equal the criteria of any listed  
 7 impairments \* \* \*." AR at 16. Accordingly, the court concludes  
 8 that the ALJ adequately explained his evaluation of the combined  
 9 effects of the impairment.

10  
 11 3

12 Plaintiff finally contends that the ALJ did not make a  
 13 reasonable effort to obtain a "case evaluation, based on the record  
 14 in its entirety." Pl Mot at 15. Plaintiff cites Howard v Barnhart,  
 15 which held that "the ALJ 'shall make reasonable efforts' to ensure  
 16 that a qualified individual 'evaluates the case' of the claimant."  
 17 341 F3d 1006, 1014 (9th Cir 2003); 42 USC § 1382c(a)(3)(I). Howard  
 18 held further that "the ALJ is required to make a reasonable effort  
 19 to obtain a case evaluation, based on the record in its entirety,  
 20 from a pediatrician or other appropriate specialist, rather than  
 21 simply constructing his own case evaluation from the evidence in the  
 22 record." 341 F3d at 1014. The Howard court concluded that the ALJ  
 23 failed to rely on a "case" evaluation: "[r]ather, he only relied on  
 24 the individual evaluations and reports of each separate specialist,  
 25 which pertained to each of their individual specialities. The ALJ  
 made no effort to have [the] case evaluated in its entirety." Id.

27 The instant case is clearly distinguishable from Howard.  
 28 First, while the ALJ in Howard denied plaintiff's request for a

1 pediatrician to provide an expert evaluation, the ALJ in the present  
2 case ensured that a "qualified individual" evaluated plaintiff's  
3 entire case. The ALJ in the present case obtained the medical  
4 expert testimony of pediatrician Dr Grossman. AR at 60-64, 87-88.  
5 Dr Grossman belonged to the American Board of Pediatrics and  
6 practiced at San Francisco General Hospital. AR at 89. Plaintiff's  
7 counsel had no objection to Dr Grossman serving as a medical expert  
8 at the April 11, 2000, hearing. AR at 58. Moreover, the ALJ sent  
9 copies of all relevant medical exhibits to Grossman and informed him  
10 that he would be asked to testify "as an expert medical witness on  
11 the basis of the enclosed material as well as any additional  
12 evidence that may be ordered at the hearing." AR at 87-88.

13 Most importantly, substantial evidence indicates that both  
14 Dr Grossman and the ALJ examined the record in its entirety before  
15 coming to a decision. Dr Grossman was present during the entire  
16 hearing. AR 33-64. Dr Grossman heard Ms Hamilton's testimony about  
17 plaintiff's medical and functional limitations; he asked his own  
18 questions of Ms Hamilton; and he answered questions from the ALJ and  
19 the plaintiff's attorney. Id. Dr Grossman asked Ms Hamilton about  
20 both plaintiff's vision and sleeping problems, AR at 59-60, and  
21 answered questions about Dr Hoyt's eye-patching treatment and the  
22 childhood disability evaluation form. AR at 60-63. Considering  
23 this breadth of evidence, Dr Grossman concluded that "normal [child]  
24 behavior" and the temporary eye patching were the primary causes of  
25 plaintiff's functional limitations. Id.

26 Furthermore, Dr Grossman's conclusion and the ALJ's  
27 finding are supported by substantial evidence. Plaintiff argues  
28 that neither Dr Grossman nor the ALJ addressed the Valencia

## United States District Court

For the Northern District of California

1 Pediatrics report (AR at 130-35), the statements of Valencia teacher  
2 Eva White (AR at 126-29) or Ms Hamilton's testimony (AR at 35-63) in  
3 reaching their decisions. This statement is only accurate in  
4 regards to the Valencia records. These records, however, actually  
5 support, rather than contradict, Dr Grossman's and the ALJ's  
6 conclusions. The Valencia records document plaintiff's significant  
7 improvement between November 1998 and August 1999, suggesting even  
8 further that plaintiff's functional limitations were not primarily  
9 caused by her vision impairment. AR at 126-35.

10 Accordingly, the court holds that the ALJ did make a  
11 reasonable effort to obtain a case evaluation based on the record in  
12 its entirety, and Dr Grossman competently provided such an  
13 evaluation.

14

## 15 IV

16 In sum, the court affirms the ALJ's decision to deny  
17 benefits. Because substantial evidence supported the ALJ's decision  
18 and there was no legal error on the part of the Appeals Council or  
19 the ALJ, the court DENIES plaintiff's motion for summary judgment  
20 (Doc #13) and GRANTS defendant's motion summary judgment (Doc #15).

21 The clerk is directed to enter judgment in favor of the  
22 defendant and to close the file.

23

24 IT IS SO ORDERED.

25

26   
27 VAUGHN R WALKER  
28 United States District Chief Judge